

Date: August 26, 2009
To: Nevada City City Council
From: Tom Parilo, Contract Planner
Cindy Siegfried, City Planner
Subject: Public Hearing to adopt

NOTE: Due to the large volume of the staff report and Exhibits, all of the information is not included in this packet. However the information has been posted on the City's website at www.nevadacityca.gov, at the Planning Department site. The information is also available for review at City Hall during normal business hours.

1. The 2009-2014 Housing Element
2. Various amendments to the Land Use Element of the 1986 General Plan in order to implement the 2009-2014 Housing Element
3. Various amendments to the Zoning Ordinance in order to implement the 2009-2014 Housing Element
4. An amendment to Section 16.04.054 of the Subdivision Regulations in order to implement the 2009-2014 Housing Element

RECOMMENDATION: Conduct public hearing and adopt, with or without changes, the following actions:

1. Negative Declaration
2. 2009-2014 Housing Element
3. Various amendments to the Land Use Element of the 1986 General Plan in order to implement the 2009-2014 Housing Element
4. Various amendments to the Zoning Ordinance in order to implement the 2009-2014 Housing Element
5. Amendment to Section 16.04.054 of the Subdivision Regulations in order to implement the 2009-2014 Housing Element

BACKGROUND

The draft Housing Element has been undergoing the mandatory California Department of Housing and Community Development (HCD) review. The Initial Study has also been prepared and has been recommended for adoption by the Planning Commission to adopt the Housing Element and related implementation programs at their July 16, 2009 meeting. Specific General Plan amendments and rezonings to accommodate R3 zoning will be scheduled following adoption of the Housing Element. In addition there are a few policies that will require active implementation that goes beyond the amendments that support the adoption of the Housing Element. They include Program 12 requiring coordination with FREED to develop a reasonable accommodation policy for disabled residents and Programs 44 and 46 which would lead to a more formalized relationship with APPLE Center for Sustainable Living to become a contact for energy efficiency and green building assistance as well as promoting PG&E rebates.

INTRODUCTION

The purpose of this public hearing is for the City Council to review and approve the recommendations of the Planning Commission to adopt the 2009-2014 Housing Element update along with the various enumerated implementation programs, with or without changes. The balance of this report addresses key issues regarding the Housing Element and various implementing programs. Each topic is addressed separately.

The staff report is organized in the following manner (See Blue legal size dividers):

- | | |
|-----------|---|
| Section 1 | Revisions to eh March 2009 Housing Element as required by HCD |
| Section 2 | Revisions to the Land Use Element |
| Section 3 | Revisions to the Zoning Code |
| Section 4 | Revisions to the Subdivision Regulations |
| Section 5 | CEQA/Negative Declaration documents |
| Section 5 | Detailed recommendation |

Section 5 includes five separate actions as follows (See numbered tabs):

- | | |
|-----------|--|
| Exhibit 1 | Resolution adopting the Negative Declaration |
| Exhibit 2 | Resolution adopting the 2001-2014 Housing Element |
| Exhibit 3 | Resolution adopting amendments to the Land Use Element of the 1986
General Plan |
| Exhibit 4 | Ordinance amending the Zoning Code |
| Exhibit 5 | Ordinance amending the Subdivision Regulations |

Housing Element

There are a number of changes made to the Housing Element as part of the HCD review. Those changes are included as separate amendments to the March 2009 draft Housing Element. Each is briefly discussed below. Following City Council review and approval a final Housing Element will be assembled and referred to HCD for their final certification determination.

Inclusionary Housing

The method whereby the Housing Element and related implementing programs addresses inclusionary housing is one significant local area of concern. Program 4 (page 6-4) in Section 6 of the March 2009 draft Housing Element states as follows:

“Thirty percent of all single family detached or attached homes located in new subdivisions or condominium/townhome developments that create three or more units (Ordinance 2003-03) shall be deed restricted to 1,500 square feet or smaller. Twenty five percent of those units shall be deed restricted for Low Income households and 75 percent shall be deed restricted for Moderate Income households. The developer may obtain a density bonus for the deed restricted units in accordance with uncodified Ordinance 90-10.”

This program was added as a way of assisting staff in its review of residential ownership development projects. The suggested 75 percent Moderate and 25 percent Low income deed restrictions for the 1,500 square foot maximum unit sizes were included because standards requiring income based deed restrictions from the 2001-2008 Housing Element were not fully implemented. Currently, the City Subdivision Regulations (Section Section 16.04.054) only requires the filing of a deed restriction to reflect the size limitation for the 1,500 square foot maximum. There is no adopted deed restriction requirement to include moderate income or below households as required by program 16b and 16c of the 2001-2008 Housing Element.

Requiring income-based deed restrictions to accomplish affordability on small projects is at best difficult. Larger developments in urban areas can absorb income based deed restrictions. The City's only real success is in obtaining income-based deed restrictions on second units. Normally, these units are set aside for Moderate and Low income. Upon working with the land owners who have expressed interest in the R3 zone, it has become apparent that these types of income based deed restrictions are not financially feasible for small developments (i.e. projects less than 60 to 80 units). If Program 4 is adopted as previously proposed, it may have a negative impact on the development of any ownership based projects. In short, more flexibility is needed in this regard.

The City is committed to work with developers to achieve affordability in new development as outlined in the 2001-2008 programs. The current practice is for the City to require size restrictions and to strive to obtain income based deed restrictions where it can. The most recent example is the Gracie Commons project which was approved in February 2009. This project provides a total of 16 ownership dwelling units with 4 second dwelling units. A total of 8 ownership units are to be built to less than 1,500 square feet, six of which will be deed restricted as to size. Three of the second units will be deed restricted for rents meeting Very Low income requirements. Two of those smaller units will also be deed restricted for sale to a Moderate income household.

The City also created a variety of affordable components to the Uncle Jim's Cottages project and similarly with the Co-housing project, both located off West Broad Street. The point of referencing these projects is that all three included affordable housing component that included size restrictions, income based deed restrictions, second units and a rental component to increase

affordability. Each project was different, but each provided an affordable housing component that included size restrictions, income based deed restrictions and other features to accomplish affordability. A one-size-fits-all approach (as originally provided in Program 4) may not have worked in each case. Program 4 is regulatory based and does not reflect local economic and other factors that landowners must deal with in the development of small residential projects and in particularly these uncertain times. The better outcome and approach would be to modify Program 4 to reflect the successes associated with the three recent projects. All were based on a collaborative approach to providing an affordable component. This type of approach works well when dealing with smaller projects rather than a mandate that may have the unintended consequence of discouraging residential development.

In light of this reality and building on the successes of recent projects, Program 5 (contained in the August 2009 Housing Element) (See Exhibit H attached to this section) is proposed to be modified as follows:"

"Thirty percent of all single family detached or attached homes located in new subdivisions or condominiums/ townhomes developments that create three or more units (Ordinance 2003-03) shall be deed restricted to 1,500 square feet or smaller. The subdivision shall include an affordable housing plan that includes moderate and below income housing opportunities. Said program may be accomplished through a variety of mechanisms including, but not limited to size restrictions, rental units (multiple family), second units, etc. The ultimate program shall be approved by the Planning Commission and/or City Council."

The only real uncertainty in the Nevada City housing market is how and when the national and state current economic downturn will recover. Once it does, there may be more certainty as to what type of policies and programs will do most to promote affordable housing. It is clear however that HCD's default density (16 units per acre) will produce housing at greater densities than can currently be built. The City should monitor the effectiveness of this new program through the current housing element cycle to see how or if the new R3 zoning district will fulfill its intended outcomes. In the meantime new Program 5 can be used to obtain additional sources of affordable housing units. This change to the Housing Element is also included as an amendment to Section 16.04.054 of the Subdivision Regulations (See Exhibit 5).

State Department of Housing and Community Development Review status

As of the writing of this staff report, HCD has not yet provided their final acceptance of the City's draft Housing Element. HCD has provided initial comments and staff has responded to their comments. We are currently awaiting further comments and/or an indication that HCD will accept the changes as meeting state Housing Element law.

The following changes are recommended to address HCD's latest comments to the draft March 2009 Housing Element.

Revised discussion regarding overcoming the 2001-2008 deficit

HCD's first set of comments indicated that they would not accept the City's method to overcome the 39 unit deficit. After further analysis, two additional mixed residential units were discovered that were approved during the 2001-2008 planning period. These additional two units effectively reduced the deficit to 37 units. In our second phone discussion with HCD on July 10, 2009, the requested credit for building re-use (i.e. conversion of transient units to rental housing), mixed use opportunities provided through existing zoning and new Housing Element programs, inclusionary housing programs, second units, and finally actual multiple family rental rates were accepted. In all, the analysis in Exhibit A concludes that there would be 53 potential units that would be applied to the 37 unit deficit. Exhibit A is an amendment to the entire text contained in Section 2.15 Adequate Sites Implementation Program on pages 2-4 through 2-8 of the March 2009 Housing Element.

Revised discussion regarding adequate sites for the 2009-2014 Planning Period

HCD requested additional analysis and discussion regarding the methodology to demonstrate that it will have adequate lands planned and zoned to meet the 2009-2014 Regional Housing Needs Plan for Nevada City. Based on Section 65583.2(c)(3)(B)(i) of the Government Code, Nevada City is required to have zoning meeting at least 16 units per acre to meet its "default" density to satisfy its needs to accommodate both Very Low and Low income housing needs. The discussion in Section 4.20 of the draft 2009-2014 Housing Element has been revised to further address the City's absolute needs. Since the City Council has selected three sites that could yield up to 75 dwelling units, Section 4.20 has removed the need for a 25 percent surplus factor. Based on the incorporation of 12 second dwelling units, the City would need to accommodate an additional 37 units via R3 zoning or 2.3 acres based on 16 u.p.a. density provided through the draft R3 zone.

The full text revising Section 4.20 is attached as Exhibit B.

Revised discussion regarding "Available Sites and Land Inventory" for 2009-2014 Planning Period

Section 4.05 has been revised to reflect an updated discussion that removes existing R2 zone densities from the inventory of available sites. Most sites removed reflect smaller parcels and those with existing uses that may make it difficult to be redeveloped. See Exhibit C.

Revised discussion regarding "Opportunities for Energy Conservation" for the 2009-2014 Planning Period

Section 3.70 "Opportunities for Energy Conservation" has been revised to reflect responses made to HCD. Those changes are provided in Exhibit D.

Revised discussion regarding "Persons with Disabilities" for the 2009-2014 Planning Period

Section 5.5, "Persons with Disabilities" has been revised to reflect responses made to HCD. Those changes are provided in Exhibit E.

Revised Tables in Section 5.35 “Mitigation Fees” for the 2009-2014 Planning Period

Table 5.00 7 has been revised to correct the multiple family unit hook fees. In addition two additional tables have been added to reflect comparable connection fees for water and sewer in other similar cities within the immediate region. See Exhibit F.

Revised discussion regarding “Land Use Controls” for the 2009-2014 Planning Period

HCD requested additional discussion and evaluation whether developments standards in the residential zoning districts impede development and/or unnecessarily adds costs. Exhibit G provides an expanded discussion of the standards applicable in each zone intended to accommodate residential as a primary use.

Revised “Goals, Objectives, Policies and Programs”

Together with text changes to address HCD comments, there are also changes to the Goals Objectives, Policies and Programs (Section 6 of the March 2009 Draft Housing Element). Generally, most are in response to HCD comments. See Exhibit H.

Date: June 10, 2009
To: City Council
From: Gene Albaugh, City Manager
Subject: City Manager report regarding Housing Element status

The following is an update concerning the status of the Housing Element. This update is provided because future City Council agendas are devoted to the budget and other City business.

1. The State Department of Housing and Community Development (HCD) presented its findings on the draft Housing Element on May 19, 2009 (attached).
2. Among other concerns that needed to be supplemented and further analyzed, HCD does not accept the assumptions and methods relied upon to overcome the 39 unit deficit for Very Low and Low income households from the 2001-2008 planning period.
3. City submitted preliminary responses on June 5, 2009.
4. A follow-up phone call meeting on June 9, 2009, was conducted with Paul McDougal, HCD Housing Policy Manager to explore alternative methods to resolve the divergence between Housing Element law and City's inherent limited ability to overcome the deficit.
5. The phone call meeting resulted in methods that could be strengthened and/or refined to better enable HCD to accept supplementary programs to overcome the deficit.
6. Mr. McDougal was also very complementary of the City for its efforts in creating the R3 zone and its commitment to zoning land to a higher density to meet the 2009-2014 housing allocation numbers.
7. Staff will further respond to HCD with its program adjustments by June 10, 2009, and HCD attempt to provide its overall review by the end of next week.
8. Staff will incorporate and/or recommend applicable HCD revisions into the Housing Element and various implementing programs

Next Steps

1. Advisory Review Committee review of draft Initial Study and Negative Declaration (June 23, 2009).
2. Planning Commission public hearing on draft Housing Element and implementing programs (separate agenda items) in July 2009.
3. City Council public hearing in August 2009.
4. Forward final adopted Housing Element to HCD following City Council adoption.
5. HCD certification to follow.
6. Site rezoning to occur in fall 2009 following acceptance of R3 zone and other implementing programs. This additional time will afford the three candidate site landowners the opportunity to fully understand various R3 and related standards.

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

900 Third Street, Suite 430
P.O. Box 952053
Sacramento, CA 94252-2053
(916) 323-3177 / FAX (916) 327-2643
www.hcd.ca.gov



May 19, 2009

Ms. Cindy Siegfried, City Planner
Planning Department
City of Nevada City
317 Broad Street
Nevada City, CA 95959

Dear Ms. Siegfried:

RE: Review of the City of Nevada City's Draft Housing Element

Thank you for submitting Nevada City's draft housing element received for review on March 20, 2009. The Department is required to review draft housing elements and report the findings to the locality pursuant to Government Code Section 65585(b). Communications with Mr. Tom Parilo, the City's consultant, facilitated the review.

The Department recognizes the City's recent efforts to address its housing needs, including the motel conversion to housing affordable to lower-income households. The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State housing element law (Article 10.6 of the Government Code). For example, the element must analyze the realistic residential capacity of identified sites and potential constraints on housing for persons with disabilities. The enclosed Appendix describes these and other revisions needed to comply with State housing element law.

The Department appreciates the cooperation and assistance provided by Mr. Parilo throughout the course of the review. If you have any questions or would like assistance, please contact Paul McDougall, of our staff, at (916) 322-7995.

Sincerely,

A handwritten signature in cursive script that reads "Cathy E. Creswell".

Cathy E. Creswell
Deputy Director

Enclosure

cc: Tom Parilo, Contract Planner

APPENDIX

CITY OF NEVADA CITY

The following changes would bring Nevada City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on the Department's website at www.hcd.ca.gov/hpd. Refer to the Division of Housing Policy Development and the section pertaining to State Housing Planning. Among other resources, the Housing Element section contains the Department's latest technical assistance tool *Building Blocks for Effective Housing Elements (Building Blocks)* available at www.hcd.ca.gov/hpd/housing_element_2/index.php, the Government Code addressing State housing element law and other resources.

A. Housing Needs, Resources, and Constraints

1. *Include an inventory of land suitable for residential development, including vacant sites and sites having the potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites (Section 65583(a)(3)). The inventory of land suitable for residential development shall be used to identify sites that can be developed for housing within the planning period (Section 65583.2).*

The City has a regional housing need of 131 housing units, of which 49 are for lower-income households. To address this need, the element relies on vacant and underdeveloped sites, capacity for second units, and candidate sites for rezoning to a new R3 district. However, to demonstrate the adequacy of these sites and strategies to accommodate the City's regional housing need, the element must include analyses, as follows:

Non-Vacant Sites: The element lists some non-vacant sites with existing residential units (Tables 4.00-1 through 4.00-4) but does not analyze the extent to which existing uses may impede additional residential development within the planning period. For example, the element could describe structural conditions or other circumstances and trends demonstrating the potential to redevelop to more intense residential uses.

Realistic Capacity: The element does not address this requirement. It must estimate the number of units that can be accommodated on each site in the inventory. The element should describe the methodology for determining capacity including any adjustments to account for the imposition of land-use controls and site improvements. The City could utilize typically built densities to assist in addressing this requirement. In estimating residential capacity of non-vacant sites, the methodology must account for the extent to which existing uses impede development in the planning period. Projected residential development capacity should not, for example, assume all non-vacant sites will redevelop in the planning period.

2. *Analyze potential and actual governmental constraints upon the maintenance, improvement, and development of housing for all income levels, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures (Section 65583(a)(5)).*

Land-Use Controls: The element identifies various residential development standards (page 5-3), then generally concludes the standards are not a constraint. However, the element must include an analysis of their potential impacts on the cost and supply of housing. This analysis is particularly important since the element indicates some development standards could impede the ability to achieve maximum densities (page 5-2). The element should include programs as appropriate to address and remove or modify identified constraints. See the *Building Blocks'* website at http://www.hcd.ca.gov/hpd/housing_element2/CON_landuse.php.

Inclusionary Housing: While the housing element describes Nevada City's inclusionary ordinance, it must include an analysis of the ordinance for impacts on the cost and supply of housing. For example, the element should include a complete description and analysis of the types of incentives available to encourage and facilitate compliance with inclusionary requirements and what options are available for developers to meet the requirements.

Processing and Permit Procedures: The element generally discusses required permits, permit processing times and indicates multifamily is subject to design and discretionary review (pages 5-12 to 5-14). However, the element must specifically describe and analyze the level of discretionary action required and address decision-making criteria, such as approval findings, particularly for multifamily, for impacts on approval certainty. The analysis should also address design review procedures and guidelines, including identifying standards and guidelines and analyzing the impact on housing costs and approval certainty. See the sample analysis on the *Building Blocks'* website at http://www.hcd.ca.gov/hpd/housing_element2/CON_permits.php.

Housing for Persons with Disabilities: While the element describes the City accommodates requests for retrofits and requirements for group homes (page 5-14), it must include a complete analysis of potential constraints on the development, maintenance, and improvement of housing for persons with disabilities. The analysis should address zoning, development standards, building codes, and approval procedures for the development of housing for persons with disabilities. Examples of standards and requirements that should be analyzed include: (1) any definitions of family in the zoning code; (2) spacing or concentration requirements; and, (3) whether the City has an adopted reasonable accommodation policy or procedure for providing exception in zoning and land-use. Refer to the Department's memo and the *Building Blocks'* sample analysis at http://www.hcd.ca.gov/hpd/housing_element2/CON_disabilities.php.

3. *Analyze any special housing needs, such as those of families and persons in need of emergency shelter (Section 65583(a)(7)).*

Homelessness: The element notes a recent count of homeless and includes preliminary results for Western Nevada County (page 3-27). However, the element must include an estimate of homeless needs in Nevada City. The City could utilize information from organizations listed in the element such as Hospitality House, Nevada County Human Services, and Odyssey House. The analysis should estimate the number and type of existing shelter beds and assess the degree of unmet homeless needs. Refer to the sample analyses on the *Building Blocks'* website at http://www.hcd.ca.gov/hpd/housing_element2/SHN_shelters.php.

4. *Analyze the opportunities for energy conservation with respect to residential development (Section 65583(a)(8)).*

While the element includes Program 39 to adopt a sustainability ordinance, including green building techniques, the City could also consider adopting measures to facilitate complying with the ordinance. For example, Program 39 could commit to identify incentives and funding to assist with green building or could assign a point of contact or other technical assistance to facilitate meeting green building requirements. Program 39 should also be revised to address energy conservation opportunities for the existing housing stock, such as promoting the various programs listed (page 3-33) and facilitating retrofits upon resale of homes. Additional information on potential programs to address energy conservation objectives is available in the *Building Blocks'* technical assistance tool at http://www.hcd.ca.gov/hpd/housing_element2/SIA_conservation.php and the Department's *Green Building and Sustainability Resources* bibliography at http://www.hcd.ca.gov/hpd/green_build.pdf.

B. Housing Programs

1. *Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including the emergency shelters. Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low- and low-income households (Section 65583(c)(1)).*

As noted in finding A1, the element does not include a complete site analysis and may need to add or revise programs based on the outcomes of the analysis. In addition:

Adequate Sites: The element identifies a shortfall of sites to accommodate the City's housing needs for lower-income households (37 units) and an unaccommodated need of 39 units from the prior planning period for a total of 76 units for lower-income households. To address the shortfall and unaccommodated need, the element identifies several candidate sites (page 4-20) and Programs 18 and 19. Pursuant to Government

Code Sections 65583(c)(1), and 65583.2(h) and (i), adequate sites programs must allow a minimum of 16 units per site and require a minimum density of 16 units per acre. Some identified sites allow less than 16 units per site and cannot be utilized toward the identified shortfall. Programs should also be revised to:

- include reference (i.e., parcel number) to actual sites being rezoned;
- add sites and capacity to address the total need for 76 units described above; and
- describe proposed development standards for the new R3 district to ensure standards will facilitate achieving maximum densities and encourage the development of housing for lower-income households.

Program 7 (Emergency Shelters and Transitional and Supportive Housing): For *emergency shelters*, the program proposes to amend the Light Industrial zone to permit emergency shelters by-right. However, the element should clarify "by right" is consistent with Chapter 633, Statutes of 2007 (SB 2), to permit shelters without discretionary action. The program should also commit to only subject shelters to the same development and management standards that apply to other allowed uses within the identified zone. For *transitional and supportive housing*, the Program appears to limit transitional and supportive housing to the Light Industrial and Public-Quasi Public zones. Transitional and supportive housing are unique and separate uses from emergency shelters. Pursuant to SB 2, the program should be revised to amend zoning to permit supportive and transitional housing as residential uses and only subject to those restrictions that apply to other residential uses of the same type in the same zone.

Second Units: Since Nevada City relies on second units to accommodate its housing needs for lower-income households, the element should include a program to monitor the affordability of second units.

2. *The housing element shall contain programs which "assist in the development of adequate housing to meet the needs of extremely low-, low- and moderate-income households (Section 65583(c)(2))."*

The element must include specific actions to assist in the development of housing for lower-income households. The element contains Program 1 (Pursue Funding for Rehabilitation and First-time Homebuyers) and Program 30 (Density Bonus). However, the element should include additional actions to assist in the development of housing for lower income households, including renter households. For example, the element should include programs to describe when and how often the City will initiate contact with developers and list subsequent steps Nevada City will take to facilitate development of rental housing. See the Department's *Financial Assistance Program Directory* at http://www.hcd.ca.gov/fa/LG_program_directory.pdf. Additional program actions could include priority processing, promoting the density bonus ordinance and fee deferrals or waivers.

In addition, pursuant to Chapter 891, Statutes of 2006 (AB 2634), existing programs should either be revised or programs added to specifically assist in the development of a variety of housing types to meet the housing needs of extremely low-income (ELI) households. To address this requirement, the element could revise programs to target some funding for the development of housing affordable to ELI households and/or offer

financial incentives or regulatory concessions to encourage the development of housing types, such as single-room occupancy (SRO) units, which address the needs of this income group. For example, Program 3 could be revised to describe how and when the City will encourage and provide financial incentives to facilitate SRO developments.

3. *The housing element shall contain programs which "address, and where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing" (Section 65583(c)(3)).*

As noted in finding A2, the element requires analysis of potential governmental constraints. Depending upon the results of that analysis, the City may need to add or revise programs and address and remove or mitigate any identified constraints.